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Office of the Attorney General

Washington, D. C. 20530

January 10, 1980

MEMORANDUM TO: The President

FROM: Benjamin R. Civiletti, *JK*
Attorney General

SUBJECT: Report to Congress under the
Export Administration Act of 1979

I am informed that you are preparing your report to Congress on the agricultural export controls imposed due to the Soviet invasion of Afghanistan and that the question has arisen whether you should cite to both Sections 5 and 6, or only Section 6, of the Export Administration Act of 1979 as the source of legal authority for your actions. Based upon legal analysis by the Department of Justice and upon information from other agencies, I strongly recommend that you rely only upon Section 6, the "foreign policy" provision, and not upon Section 5, the "national security" provision.

To satisfy the requirements of Section 5, the affected commodity must "make a significant contribution to the military potential" of the Soviet Union. The plain terms of that statute, its legislative history, and past practice by the Departments of Agriculture and Commerce all point to a rather literal interpretation of this requirement, i.e., that the commodity must have some military application or relation to the military establishment of the country against which export controls are to be applied. It is my understanding that the Departments of State, Defense, Agriculture, and Commerce (and, by implication, the Central Intelligence Agency) have all independently concluded that no such assertion can be made with respect to the linkage between agricultural commodities and the Soviet military potential and would be unable to testify to that effect.

Accordingly, the Justice Department does not believe that a citation in your report to Congress to Section 5 would be legally defensible, either to the Congress or in any court where the export control program would be challenged. A citation to Section 6, on the other hand, would clearly be defensible with abundant support in fact.

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cc: Dr. Zbigniew Brzezinski
Assistant to the President for National Security Affairs

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